

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JOHN DOE,	.
	.
Plaintiff,	.
	. Case No. 21-cv-20706
vs.	.
	. Newark, New Jersey
BAILE SEBROW,	. October 12, 2023
	.
Defendant.	.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE EDWARD S. KIEL
UNITED STATES MAGISTRATE JUDGE

This transcript has been reviewed and revised in accordance with L. Civ. R. 52.1.

APPEARANCES (the parties appeared via teleconference):

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Also present: Plaintiff

For the Defendant: IRA W. HELLER, ESQ.
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Also present: Ms. Sebrow

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Proceedings recorded by electronic sound recording; transcript produced by transcription service.

1 (Commencement of proceedings)

2

3 THE COURT: Good morning, everyone. We're on the
4 Doe v. Sebrow matter. It's 21-20706.

5 If I could have the appearance on behalf of
6 plaintiff, please.

7 MR. SZALKIEWICZ: Daniel Szalkiewicz, Daniel
8 Szalkiewicz & Associates PC, 23 West 73rd Street, Suite 102,
9 New York, New York 10023, for the plaintiff John Doe, who is
10 on the conference call as well.

11 Good morning, Your Honor.

12 THE COURT: Good morning.

13 And on behalf of defendant?

14 MR. HELLER: Yes, good morning, Your Honor. Ira
15 Heller on behalf of Ms. Baile Sebrow, who is also present.

16 THE COURT: All right.

17 So there's a couple of things pending, and I want
18 to address the motion to file a counterclaim or answer a
19 counterclaim out of time. Let me see. That was at ECF
20 Number 92.

21 Let me -- or to set the stage, what I'm guided by
22 is Judge Wigenton's decision on March 22nd, 2023, and in that
23 order, she permitted the defendant to file a amended
24 counterclaim -- I'm sorry -- permitted the defendant to file
25 a -- to amend the counterclaims that were dismissed without

1 | prejudice. Count 1 was dismissed without prejudice; that was
2 | for defamation. I'm sorry. Fraudulent misrepresentation.
3 | Count 2 was dismissed; that was for defamation; Count 2 was
4 | also dismissed as a claims for defamation based on statements
5 | made during litigation. And Count 3 was dismissed, which is
6 | a count for abuse of process. And those were the
7 | counterclaims that Judge Wigenton permitted to be amended.

8 | What I get from the motion that is now before me
9 | and what the attachment is that there are entirely different
10 | counterclaims being asserted. One is for false light. And
11 | the other is sexual abuse and sexual assault.

12 | If you're going to file an entirely different
13 | counterclaim, you can't do that as a matter of right under
14 | Judge Wigenton's order, Mr. Heller. You would have to file
15 | an -- you would have to file a motion to amend, Mr. Heller.
16 | Right?

17 | MR. HELLER: Yes, understood, Judge.

18 | THE COURT: Yeah, so this is not the proper way to
19 | do it. If you're going to entirely change or add new claims,
20 | you are -- if you were to just amend as directed by Judge
21 | Wigenton, then I could see you properly filing a motion to
22 | extend time to file your answer and counterclaim.

23 | But you're doing -- what you're doing is entirely
24 | different. And so you're going to have to file a motion to
25 | amend under the proper rule, and then give Mr. Szalkiewicz an

1 opportunity to respond.

2 I hope that is clear, Mr. Heller.

3 MR. HELLER: Yes. Yes, very clear.

4 THE COURT: All right. All right.

5 So, Mr. Szalkiewicz, the motion is going to be
6 denied. And he'll be given an opportunity, if he wants to
7 file that application, to file an amended counterclaim.

8 And then once that is filed, I'm going to get to a
9 point where we have operative pleadings so that we can issue
10 very -- a decision on the pending motion for sanctions. And
11 I can't do that until we have everything squared away on the
12 pleadings and the pleadings closed.

13 So I know, Mr. Szalkiewicz, that your motion is out
14 there, and I'm going to get to it. But I need to have some
15 assurance that the pleadings are completed.

16 Mr. Szalkiewicz, have you got any comments on that?

17 MR. SZALKIEWICZ: So, Your Honor, just so I
18 understand procedurally where we are, I believe Mr. Heller
19 filed the motion to file a late answer and then tried to --
20 for lack of a better term -- sneak in these new counterclaims
21 as well.

22 So is the Court going to deny the counterclaims but
23 rule on the motion for him to file the untimely answer, the
24 amended answer?

25 THE COURT: Well, I think the whole thing should be

1 administratively terminated at this point because I would
2 like to just have one motion. If he's going to pursue a
3 entirely new counterclaim, that counterclaim is going to
4 be -- has to be attached to an amended answer, and so he's
5 going to have file one motion that does the --

6 MR. SZALKIEWICZ: Okay.

7 THE COURT: Let me just take a look.

8 Now, there was an amended -- well, let me just make
9 sure I have the docket correctly.

10 Was there an amended complaint that was filed?

11 MR. SZALKIEWICZ: Yeah, pursuant to the Court's
12 order, we filed an amended complaint in June.

13 Counsel, out of time, filed an amended answer in
14 July.

15 It was administratively --

16 (Simultaneous conversation)

17 THE COURT: That's actually a good point,
18 Mr. Szalkiewicz.

19 The -- the answer is -- hasn't changed at all.
20 Right?

21 (Simultaneous conversation)

22 MR. HELLER: -- it's virtually the same answer.

23 THE COURT: Yeah --

24 (Simultaneous conversation)

25 MR. HELLER: -- because, you know, that was since I

1 answered the first time, there was the ruling, and, you know,
2 there's been -- that I did not alter it to include the
3 redactions, and I had to do that, of course.

4 THE COURT: All right. So --

5 (Simultaneous conversation)

6 MR. SZALKIEWICZ: So that makes sense.

7 THE COURT: It had --

8 MR. SZALKIEWICZ: No. It's okay, Your Honor. I
9 mean, I just wanted to clarify the record that the answer
10 that was stricken on July 7th, contained the original
11 counterclaims and -- these new counterclaims as well.

12 THE COURT: So --

13 (Simultaneous conversation)

14 THE COURT: So you're right. There is two
15 different aspects of it, and thank you for pointing that out
16 to me.

17 The filing of the answer itself will not delay my
18 resolution of the sanctions motion. And he had tried to file
19 that back in July, and then he waited a couple of months to
20 file this pending motion. So I don't find that there's a lot
21 of prejudice in terms of the filing of the answer.

22 So, Mr. Heller, I'll let you file the answer just
23 the answer, not the counterclaim, by October 20th. Do not
24 include the counterclaim until you file your -- until you
25 file an application for leave to file an amended

1 counterclaim. Okay?

2 MR. HELLER: Yes.

3 THE COURT: Okay.

4 So just the answer will be filed by October 20th.
5 That will close the pleadings out on the complaint or on the
6 amended complaint.

7 And then let me put a conference out there in
8 November and see whether a motion is filed. And if a motion
9 is filed, I'll address it at the next conference, which will
10 be November 22nd at 10 A.M.

11 All right.

12 Mr. Szalkiewicz, have you got anything further
13 today?

14 MR. SZALKIEWICZ: I mean, Your Honor, we're just in
15 an odd procedural standpoint here where we still don't have
16 any discovery, but we also don't have any relief, and this
17 has been dragging on significantly now for my client.

18 THE COURT: Yup. And I still -- and I know that
19 your motion for sanctions is out there.

20 MR. SZALKIEWICZ: I believe the Court denied it,
21 though, administratively because we did not do a request for
22 a default judgment from the clerk's office initially.

23 THE COURT: Yup. I think your motion for sanctions
24 is still out there, isn't it?

25 MR. SZALKIEWICZ: I don't think there are any other

1 open motions. I have one from -- on August 25th, 2023, for a
2 default judgment.

3 Oh, you know, we do have the order to show cause,
4 but I think the Court, as well, sort of cleared that off the
5 docket by ordering -- by denying counsel's objections.

6 But I don't know --

7 THE COURT: You were -- you were moving for default
8 judgment as to the defendant. But this issue, he filed a
9 motion to extend time.

10 But under our rules, you've got to give him default
11 first and then move for default judgment. Right?

12 MR. SZALKIEWICZ: I understand.

13 THE COURT: Okay.

14 So -- but I believe you have a -- I believe you
15 have an application for sanctions, pending.

16 MR. SZALKIEWICZ: -- just -- Your Honor, it
17 wouldn't surprise me if I do. It was the motion for -- for
18 leave to --

19 (Simultaneous conversation)

20 THE COURT: You have a motion -- I'll have to take
21 a look at the docket more carefully. But I recall there's
22 something pending where you're seeking sanctions for not
23 having produced any discovery.

24 MR. SZALKIEWICZ: That would be, I believe, under
25 the one that was term -- administratively terminated. But we

1 can --

2 THE COURT: I got you. Okay. Okay --

3 (Simultaneous conversation)

4 MR. SZALKIEWICZ: -- once -- filed, you know, we
5 would request the ability to file a motion.

6 The other issue that we have, again, Your Honor,
7 is -- I mean, just the blatant nonpayment of any of these
8 court orders that have been issued. There was an order that
9 Mr. Heller was required to make a payment on the most recent
10 \$450 order by September 19th. He hasn't made an effort to do
11 it.

12 --representation --

13 (Simultaneous conversation)

14 THE COURT: Mr. Heller?

15 (Simultaneous conversation)

16 MR. HELLER: All right. Well, Judge, you know, one
17 of the -- you know, as -- meeting my objections, you know, I
18 was informed by Your Honor that they have to go via motions.
19 I actually did submit a letter to the judge today because I
20 did prepare a motion. But I explained to the judge in the
21 letter as to why I would like a little of extra time to file
22 that. Some of that -- we're obviously out of time, so part
23 of the motion is the request to be able to file this motion
24 out of time to have my objections accepted.

25 So one of them is an objection to the sanctions. I

1 know that this is -- you know --

2 THE COURT: Oh, Mr. Heller, you've got to -- you
3 have to start filing things on time. It clogs up the docket,
4 and it causes all these --

5 MR. HELLER: Understood. Understood.

6 THE COURT: -- procedural problems that we're
7 facing today.

8 MR. HELLER: Of course.

9 THE COURT: You do what you've got to do.

10 All right.

11 So we'll circle back on November 22nd. I'll see if
12 a motion to filed.

13 And I think, Mr. Szalkiewicz, the more that I think
14 about it, I think, based upon discussions at status
15 conferences, that I was going to take the defendant's failure
16 to provide discovery into consideration and do my own order
17 on it.

18 But let me take a look more closely at the docket,
19 and I'll be more prepared to discuss what we're going to do
20 on November 22nd.

21 MR. SZALKIEWICZ: And I appreciate that,
22 Your Honor. And, obviously, under Rule 37, you know, we'll
23 be requesting that, once an answer is filed, it be stricken
24 anyway.

25 But I do understand the close of the loophole issue

1 where we are right now. So I appreciate that.

2 THE COURT: Yeah, yeah, that -- that may be the way
3 to do it procedural correctly. But, again, I wasn't thinking
4 about that prior to getting on the call. And I apologize for
5 that.

6 All right, everyone. --

7 MR. SZALKIEWICZ: November is virtual or in person?

8 THE COURT: Yes, Mr. Szalkiewicz?

9 MR. SZALKIEWICZ: I'm sorry. November 22nd will be
10 another status call? Or will it be an in-person conference?

11 THE COURT: That'll be a telephone status call.

12 MR. HELLER: I'm sorry, Your Honor.

13 It'll be a -- another call?

14 THE COURT: It'll be a telephone call.

15 MR. SZALKIEWICZ: Thank you very much, Your Honor.

16 THE COURT: All right, everyone. Have a good day.

17 We are off the record.

18 (Conclusion of proceedings)

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|Hearing
|21-cv-20706, October 12, 2023
|Certification

12

Certification

I, SARA L. KERN, Transcriptionist, do hereby certify that the 12 pages contained herein constitute a full, true, and accurate transcript from the official electronic recording of the proceedings had in the above-entitled matter; that research was performed on the spelling of proper names and utilizing the information provided, but that in many cases the spellings were educated guesses; that the transcript was prepared by me or under my direction and was done to the best of my skill and ability.

I further certify that I am in no way related to any of the parties hereto nor am I in any way interested in the outcome hereof.

s/ *Sara L. Kern*

23rd of October, 2023

Signature of Approved Transcriber

Date

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